

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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JOHN E. SWALLOW
Chief Deputy

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Chief Deputy

March 8, 2010

REQUEST BY THE UTAH ATTORNEY GENERAL FOR PROPOSALS TO SERVE AS BOND COUNSEL, DISCLOSURE COUNSEL, OR BOTH FOR THE STATE BOARD OF REGENTS OF THE STATE OF UTAH AND THE UNIVERSITY OF UTAH THROUGH DECEMBER 31, 2012, FOR THE ISSUANCE OF BONDS FOR, AND TO PROVIDE LEGAL ADVICE ON THE FINANCING OF, VARIOUS CAPITAL FACILITIES PROJECTS AT AND FOR THE UNIVERSITY OF UTAH.

PLEASE NOTE: WRITTEN PROPOSALS MUST BE RECEIVED NO LATER THAN 5:00 P.M. ON MONDAY, MARCH 22, 2010.

The Utah Attorney General ("Attorney General") is requesting proposals from attorneys and firms interested in serving as bond counsel¹ and disclosure counsel for the State Board of Regents of the State of Utah ("Board") and the University of Utah ("University") for the issuance of bonds for, and to provide legal advice on the financing of, various capital facilities projects at and for the University of Utah, for an initial period of approximately three years, beginning immediately upon appointment and continuing through December 31, 2012, with the Attorney General, after consulting with the Board and the University, having the option to

¹ Although the issuer may ultimately decide to issue debt instruments other than "bonds," or to finance the buildings through other means, such as through a lease-purchase agreement, for ease of reference, throughout this request for proposals, the term "bond" will be used to refer to the type of debt instruments being issued, and includes legal services needed in conjunction with other means of financing buildings, such as through lease-purchase agreement. Similarly, the term "bond counsel" will be used to refer to the attorney(s) or firm(s) that will be appointed pursuant to this request for proposals to assist the Board and the University in the financing of these buildings, in whatever form the financing(s) may take.

extend the appointment for two (2) periods of one-year each, with the mutual consent of bond counsel. The appointment is more fully described below under "Nature of the Appointments."

In response to this request for proposals ("RFP"), the Attorney General will consider proposals from the following: an individual attorney; two or more individual attorneys in association with each other; a law firm; two or more law firms in association with each other; or one or more individual attorneys in association with one or more law firms. For ease of reference, the term "firm" or "firms" will hereinafter refer to each of these groupings.

OVERVIEW

The Board and the University have asked the Attorney General to appoint bond counsel and disclosure counsel, as appropriate, to assist the Board and the University as they assess the University's need for additional capital projects, and the best method of financing those projects. The University, for example, expects it will need to finance several buildings over the next several years.

To provide the University with information on viable methods of financing these buildings, the University has appointed, through a "request for proposals" procedure, Wells Fargo Securities ("Wells Fargo") as the University's financial advisor for these projects. Wells Fargo's appointment is on a year-to-year basis, with its appointment having been renewed in October 2009 for an additional one-year period.

The Board and the University desire to have bond counsel and disclosure counsel as an ongoing part of the financing team advising the University on these projects. The Board and the University have asked the Attorney General to appoint bond counsel and disclosure counsel for these anticipated projects, and to appoint bond counsel and disclosure counsel for an extended period of time, rather than on a project by project basis, in order to give the University continuity between the projects, and to have bond counsel and disclosure counsel, as appropriate, available to consult with the University, Wells Fargo, and others on and between projects. The Attorney General has agreed to appoint bond counsel and disclosure counsel for the Board and the University for this series of projects for an initial period beginning immediately upon appointment and ending December 31, 2012, with the Attorney General, after consulting with the Board and the University, having the option to extend the appointment for two (2) periods of one-year each, with the mutual consent of bond counsel and disclosure counsel, as appropriate.

For the past several years, the Board and the University have issued bonds at least once a year for capital facilities for the University. Nonetheless, firms submitting proposals, and bond counsel and disclosure counsel, as appropriate, ultimately appointed under this RFP, should recognize that the appointment of bond counsel and disclosure counsel by the Attorney General

does not in any way guarantee that any bonds will be issued during the approximately three-year period of the firm's appointment, or during any extension thereof.

NATURE OF THE APPOINTMENT

Except as otherwise noted in this RFP, bond counsel and disclosure counsel appointed under this RFP will serve in that capacity for: (a) any bonds authorized by the Legislature in calendar years 2010, 2011, and 2012, which are actually issued by the Board and the University during calendar years 2010, 2011, and 2012; (b) any bonds authorized prior to calendar year 2010 which have not yet been issued, but which are issued by the Board and the University during calendar years 2010, 2011, and 2012; and (c) any bonds issued by the Board and the University during calendar years 2010, 2011, and 2012 to refund or redeem bonds or other debt instruments previously issued by the Board and the University.

The appointment under this RFP includes services as bond counsel and disclosure counsel, where appropriate, for bonds issued for projects for the University of Utah Hospital ("University Hospital"), and such other entities that are a part of the University, as determined by the Attorney General on a case by case basis. Should a question arise as to whether the firm appointed under this RFP will serve as bond counsel and disclosure counsel on a particular bond issue, or whether a separate RFP will be issued to appoint bond counsel and disclosure counsel for that bond issue, the Attorney General alone will make the determination, after consulting with officials from the Board and the University.

NOTE: Whether disclosure counsel appointed under this RFP performs any services on a bond issue will in part be determined by the wishes of the underwriter² selected for the bond issue. If the underwriter is willing to have disclosure counsel appointed by the Attorney General under this RFP perform the disclosure work, the appointed disclosure counsel will do so. However, if the underwriter wants to use its own underwriters' counsel to do the disclosure work, the appointment of disclosure counsel under this RFP will likely be rescinded by the Attorney General in order to avoid duplication of services, and to minimize the costs of issuance. The decision as to whether disclosure counsel appointed under this RFP provides services on this bond issue will be made solely by the Attorney General, after consulting with representatives of the Board, the University, and other members of the financing team.

² The term "underwriter" is used to mean the entire underwriting team, even though more than one underwriter may be selected by the Board and the University for a bond issue.

APPOINTMENT BY ATTORNEY GENERAL

The Attorney General is appointing bond counsel and disclosure counsel under this RFP pursuant to Utah Code Ann. § 67-5-5 (West 2009). The procedures the Attorney General will follow in making the appointment are set forth in Utah Admin. Code Rule R105-1.

TERM OF APPOINTMENT

Bond counsel and disclosure counsel appointed under this RFP will serve in that capacity for bonds issued by the Board and the University effective immediately upon appointment, and during calendar years 2010, 2011, and 2012. At the time bond counsel and disclosure counsel are appointed under this RFP, should the Board and the University have already begun proceedings for the issuance of bonds, the Attorney General, after consulting with officials of the Board and the University, will make the determination as to whether the former bond counsel should continue to serve in that capacity for that bond issue or whether new bond counsel and disclosure counsel appointed under this RFP will serve as bond counsel and disclosure counsel for that bond issue. Similarly, at the conclusion of the appointment of bond counsel and disclosure counsel under this RFP, should the Board and the University have already begun proceedings for the issuance of bonds, the Attorney General, after consulting with officials of the Board and the University, will make the determination as to whether the bond counsel and disclosure counsel appointed under this RFP should continue to serve in that capacity for that bond issue or whether new bond counsel and disclosure counsel appointed under the next RFP for these services will serve as bond counsel and disclosure counsel for that bond issue.

RESPONSIBILITIES OF BOND COUNSEL

Bond counsel will advise the Board and the University on the financing of any capital facilities the Board and the University consider acquiring or constructing during the term of bond counsel's appointment. Bond counsel will also likely be requested to advise and assist the University in making presentations to the University's Board of Trustees ("Trustees") on the financing of any such projects. Should the Trustees approve the buildings, including the financing plan, bond counsel will also likely be requested to assist the University in making a presentation to the Board. If the Board then recommends that the Legislature approve bonding for a new building at the University, bond counsel may be called upon to provide advice to the Legislature, as well, on such matters as drafting legislation, appearing before legislative committees, etc.

Bond counsel will need to provide up to fifty (50) hours of legal advice each calendar year to the Board and the University for which bond counsel will not be paid other than through the fees bond counsel has built into its fees for any bonds issued during the term of bond counsel's appointment.

Bond counsel will have the responsibilities and perform the services usually associated with bond counsel in the issuance of bonds. These services will likely include, but will not be limited to: development of necessary legal documentation; assistance with the issuance and sale of the bonds; issuance of an opinion as to the legality and validity of the bonds; issuance of an opinion regarding the tax-exempt status of the bonds; having primary responsibility for the preparation and development of an official statement for the bond issues; and attending to the details of the closings and printing of the bonds, as required. Bond counsel will also be expected to attend all meetings associated with the issuance of bonds.

RESPONSIBILITIES OF DISCLOSURE COUNSEL

Disclosure counsel will have all the responsibilities, and will provide all the services, normally associated with disclosure counsel for revenue bond issues. These responsibilities and services will likely include, but will not be limited to: reviewing documentation developed by bond counsel and the financial advisor, and developing any additional necessary legal documentation; assisting with the issuance and sale of the bonds; issuing a 10b-5 opinion; assisting, as appropriate, in the preparation, development, and review of an official statement for the bond issue; and performing such other duties as are normally and customarily required of disclosure counsel. Disclosure counsel will also be expected to attend all meetings they are required to attend that are associated with the bond issue.

As stated above, whether the firm appointed as disclosure counsel under this RFP performs any services on a related bond issue will in part be determined by the wishes of the underwriter for the bond issue. If the underwriter is willing to have the firm appointed by the Attorney General perform the disclosure work, the appointed disclosure counsel will do so. If the underwriter wants to appoint underwriters' counsel to do the disclosure work, the appointment of disclosure counsel under this RFP for the bond issue will likely be rescinded by the Attorney General in order to keep down the costs of issuance, but the decision as to whether disclosure counsel also performs services on the bond issue will be made solely by the Attorney General, after consulting with representatives of the Board, the University, and other members of the financing team.

REQUIRED CONTENTS OF PROPOSALS TO SERVE AS BOND COUNSEL

Proposals must address the following criteria, which the Attorney General will use to select bond counsel:

- A. The ability of the firm to provide the necessary services in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:

1. The experience of the firm as bond counsel or disclosure counsel on traditional higher education revenue bond financings, and especially any experience related to pledges of:
 - a. Hospital revenues;
 - b. Auxiliary and/or student fee revenues;
 - c. Indirect cost recovery; and
 - d. Other revenue sources.

NOTE: Because it is likely the Attorney General will appoint a panel to evaluate the proposals (see below under “The Selection Process – Oral Presentations”), and some members of the panel may not be familiar with your firm, please provide the information requested in this paragraph, even if you have recently submitted this same information to the Attorney General's office in a proposal on another bond issue.

2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the “Municipal Bond Attorney’s Section” of The Bond Buyers’ Municipal Marketplace (the “Red Book”). The proposal should address the resources the firm would use to handle any complex tax issues that may arise. The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as bond counsel, but primary use of local attorneys will be a positive element in evaluating this factor.
3. The availability of the firm to complete work on bond issues in a timely and professional manner.

- B. The fee structure and estimated costs for the legal services provided.

Usually when the Attorney General is asked to appoint bond counsel and disclosure counsel for a college or university, the Legislature has already authorized the issuance of the bonds, and the nature and size of the bonding project is known (e.g., \$25 million of bonds authorized for a new engineering building at a college or university). There is always some risk the bonds will not be issued; however, the risk is not very great, since even if interest rates increase, the Legislature has determined the project is needed now and has

authorized its funding through the issuance of bonds. In addition, the number of projects or facilities that will be funded through the bond issue is set, and there will be just one bond issue to fund the project or facility. Thus, in considering the fee factor, the Attorney General is usually able to ask firms to quote the fee they would charge for this one bond issue, barring any unforeseen circumstances, and firms are generally able to give a fairly accurate quote of what they expect their fees to be.

Under this RFP, however, bond counsel will be appointed for multiple years. The number of buildings or projects that will need to be built or acquired using bonds to finance them and the nature and structure of the financings are all unknown at this time. In addition, one of the critical needs of the financing team is to have bond counsel available to consult with other team members between bond issues on projects that may never be funded, or at least may never be funded through the issuance of “bonds” (as defined in footnote 1 of this RFP).

As a result, the Attorney General must take a different approach to the “fee” element for the appointment of bond counsel under this RFP than is usually taken under other RFP’s for bond counsel. The Attorney General is asking for a firm’s proposed fee on the following buildings that are in the pipeline:

The 2010 General Session of the Utah Legislature has introduced H.B. 5, Revenue and Capital Facilities Authorizations. A copy of the pertinent provisions of that bill is attached hereto and incorporated herein by reference as Attachment A. The bill would authorize the Board, on behalf of the University, to issue revenue bonds for four buildings on the University’s campus. However, the University has informed the Attorney General that the current financing team, including bond counsel, have completed substantial work on two of the projects for which bonds would be authorized (to purchase the Ambassador Building, and to purchase the Orthopedic Hospital). As a result, it is likely that current bond counsel will be retained for those projects if the Legislature authorizes bonds for those buildings. The bill would authorize bonds for two other projects:

- (A) Up to \$10,000,000 of revenue bonds to finance the cost of constructing an expansion of the University Guest House, with the University to use its Auxiliary and Campus Facilities revenues, including room rentals, meeting room rentals, and the sale of ancillary services as the primary revenue sources for repayment; and

- (B) Up to \$119,541,000 of revenue bonds to finance the cost of constructing an Ambulatory Care Complex, with the University to use Hospital and clinical revenues and other institutional funds, as allowable, as the primary revenue sources for repayment.

While there is no certainty H.B. 5 will be passed, or that any or all of these provisions will be included in the final bill if it passes, for the purposes of the RFP, the Attorney General will assume the bill will pass. The additional following assumptions are made:

- (1) For each project or facility, the Board and the University will decide to issue the entire maximum amount of bonds at one time, i.e., \$10,000,000 of revenue bonds will be issued at one time to provide funds for construction and expansion of the University Guest House, etc.
- (2) The bonds will be issued for each project or facility as a separate bond issue, i.e., there will be two bond issues: \$10,000,000 of revenue will be issued at one time in one bond issue for the construction and expansion of the University Guest House, and \$119,541,000 of revenue bonds will be issued at one time to finance the cost of constructing an Ambulatory Care Complex.
- (3) Both bond issues will close by June 30, 2011.
- (4) In providing services as bond counsel for the issuance of these bonds, bond counsel encounters no unusual circumstances which would justify an adjustment in fees.

**PLEASE STATE WHAT YOUR FIRM'S FEES WOULD BE TO
SERVE AS BOND COUNSEL FOR A BOND ISSUE FOR EACH OF
THESE TWO (2) PROJECTS.**

In preparing its proposed fees, a firm should consider the following:

1. The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME

OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR BOND COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

2. With respect to consultation between bond issues, the University does not expect it will need to consult with bond counsel for more than fifty (50) hours in any calendar year on matters which will not be directly related to a potential bond issue.
3. NO FUNDS ARE AVAILABLE FROM THE STATE, THE ATTORNEY GENERAL'S OFFICE, THE BOARD, OR THE UNIVERSITY, FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED, NOR DO ANY OF THESE ENTITIES HAVE FUNDS TO PAY FOR CONSULTATION TIME IF BONDS ARE NOT ISSUED (but see Section B.6 below). Therefore, if the firm intends to be compensated for consultation services between bond issues, the firm's proposal should make provision for compensation for these consultation services within the firm's proposed fee for the issuance of any bonds. For example, suppose that under normal circumstances, Firm A would charge a fee of \$20,000 for \$X million of revenue bonds for Project M. Firm A also believes it could be adequately compensated for its legal consultation work if it were to receive \$150 per hour, or \$7500 for 50 hours of consultation. Firm A may then want to submit a proposed fee of \$27,500 for \$X million of revenue bonds (although if Firm A believes there will be several bond issues during the year, or that the University will not need fifty (50) hours of consultation time, Firm A may want to include a lower fee on this project to compensate it for just some of the consultation work it may have to provide during the year).
4. The Attorney General, in consultation with the appropriate officials at the Board and the University, and with others, will allow for adjustments in bond counsel fees, if there are unusual circumstances, and if funds are available from the bond issue(s). If it appears the number of hours of consultation will significantly exceed fifty (50) hours, the Attorney General will negotiate with the firm as to whether the firm should continue to provide these consultation services, and, if so, what the fee arrangements will be.

5. The proposal should indicate any other factors that would affect the firm's proposed fees under the circumstances given above, e.g., "If there is a second or third bond issue during a year, our fees would be adjusted as follows: . . .".
 6. In the event no bonds are issued during any one year, so that bond counsel is not able to be compensated from a bond issue for the firm's consultation time during that year, bond counsel may carry the fees for the above-described consultation work into the next year and recover those fees from the first bond issue completed in that next year. If no bonds are issued during the remainder of bond counsel's appointment, so that bond counsel has completed consultation work for which it has not been compensated, the Attorney General, the Board, and the University will use their best efforts to obtain funds to pay bond counsel for its services, although no guarantees of payment under those circumstances can be made.
 7. Whenever the University begins a project, bond counsel will first need to provide the Attorney General with the firm's estimate of its fees. At the conclusion of the project, bond counsel will need to provide its billing directly to the Attorney General for payment; payment may not be made without the express written approval of the Attorney General.
- C. Whether the firm has recently been selected as bond counsel, special counsel, or disclosure counsel by this office on other bonding projects, and, if so, the amount of fees received, and the evaluation by the issuer of the services performed by the firm.

REQUIRED CONTENTS OF PROPOSALS TO SERVE AS DISCLOSURE COUNSEL

Proposals to serve as disclosure must address the same criteria as set forth in paragraphs A, B, and C above under "REQUIRED CONTENTS OF PROPOSALS TO SERVE AS BOND COUNSEL," substituting "disclosure counsel" for "bond counsel," where appropriate. The only other modification for disclosure counsel to the criteria set forth in "REQUIRED CONTENTS OF PROPOSALS TO SERVE AS BOND COUNSEL" is that disclosure counsel will not provide consultation services to the Board and the University between bond issues.

Otherwise, proposals to serve as disclosure counsel must address all of the same criteria set forth above under "REQUIRED CONTENTS OF PROPOSALS TO SERVE AS BOND COUNSEL."

OTHER MATTERS FOR CONSIDERATION

1. A firm may submit proposals to serve as bond counsel, as disclosure counsel, or both. If the fee for serving as both bond counsel and disclosure counsel would be different than just combining the fees submitted to serve as bond counsel and to serve as disclosure counsel separately, that must be stated in the proposal (e.g., \$20,000 if appointed as bond counsel, \$10,000 if appointed as disclosure counsel, and \$25,000 if appointed as both bond counsel and disclosure counsel).

2. The Attorney General appoints law firms as bond counsel and disclosure counsel for two year periods for all general obligation bonds issued by the State. The Attorney General also appoints law firms as bond counsel and disclosure counsel for two year periods for all lease revenue bonds issued by the State Building Ownership Authority. With respect to the instant RFP, it is possible the Legislature could choose to pay for some of the projects or facilities the University needs by using general fund revenues from the State, or by authorizing the issuance of general obligation bonds to be issued by the State, or by authorizing the issuance of lease revenue bonds that would be issued by the State (as opposed to being issued by the Board on behalf of the University). IF GENERAL OBLIGATION BONDS OR REVENUE BONDS ARE ISSUED BY THE STATE, instead of by the Board on behalf of the University, bond counsel and disclosure counsel for those bonds will be the bond counsel and disclosure counsel selected for the two year period for the issuance of general obligation bonds by the State or bond counsel and disclosure counsel selected for the two year period for issuance of revenue bonds, as the case may be, rather than the firm appointed under the instant RFP. In the event there is any dispute as to which firm should serve as bond counsel and disclosure counsel for bonds issued for any particular building(s) for the University, the Attorney General shall make the final determination at his sole discretion, after consulting with appropriate officials and employees of the Board, the University, and the State.

3. After the Board and the University decide to proceed with bonding for any particular project or facility, bond counsel and disclosure counsel shall, as soon as possible, inform the Attorney General and the University of bond counsel's and disclosure counsel's proposed fees for that project or facility. If the Attorney General and the University determine the proposed fee is not reasonable, on a competitive basis – i.e., the fee would likely not be one of the lower proposed fees if proposals were requested to serve as bond counsel and disclosure counsel on that building alone – the Attorney General reserves the right to void the appointment of bond counsel and disclosure counsel for that project or facility, and to put out a general request for proposals on that project or facility.

4. The Attorney General shall have the right to terminate the appointment of bond counsel or disclosure counsel upon thirty days written notice, if the Attorney General determines it to be in the best interest of the State, the Board, or the University to do so. This provision,

however, will be exercised only under extraordinary circumstances, such as if bond counsel's or disclosure counsel's proposed fees on several bond issues are deemed not to be reasonable under competitive conditions.

5. Upon the expiration of the appointment, the Attorney General, in consultation with the Board and the University, shall have the option to extend the appointment for two (2) periods of one-year each, with any extension being by mutual consent of bond counsel and disclosure counsel.

6. Should a key attorney in a firm leave that firm during the period of the firm's appointment under this RFP, the Attorney General reserves the right (a) to have the appointment follow the attorney to the attorney's new firm, (b) to leave the appointment with the firm originally appointed, or (c) to appoint a new firm to fill the appointment for the remainder of the period. The determination will be at the sole discretion of the Attorney General.

7. Any firm selected to perform services under this RFP will be required to enter into a written agreement with the Attorney General.

8. Disclosure counsel is not being appointed at this time. When the Legislature has given actual approval for the University to finance a project or a facility through the issuance of revenue bonds by the Board, the Attorney General, in consultation with the Board and the University, will determine whether disclosure counsel should be appointed at that time for that project or facility, or for a period of time which might include serving as disclosure counsel for several revenue bond issues, or whether disclosure counsel should not be appointed at all for that bond issue.

UTAH ILLEGAL IMMIGRATION LAWS

S.B. 81, enacted by the 2008 General Session of the Utah Legislature, and S.B. 39, enacted by the 2009 General Session of the Utah Legislature, impose certain requirements on agencies and political subdivisions of the State of Utah to verify citizenship or legal residency of aliens who enter into contracts with State agencies or political subdivisions. In compliance therewith, the Attorney General will require that the contract any firm selected under this RFP will be required to enter into must contain the following provisions:

CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":

A. Status Verification System (also referred to as "E-verify")

1. Law Firm and each person signing on behalf of Law Firm certifies as to its own entity, under penalty of perjury, that the named Law Firm has registered

and is participating in the Status Verification System to verify the work eligibility status of Law Firm's new employees that are employed in the State of Utah (State) in accordance with Utah Code Ann. § 63G-11-103.

2. Law Firm shall require that the following provision be placed in each subcontract at every tier for any subcontractor ("Subcontractor") involved on the project(s) covered by this Agreement: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Utah Code Ann. § 63G-11-103, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

3. The Attorney General will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section of the Agreement.

4. Manually or electronically signing Law Firm's proposal is deemed Law Firm's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws, including Utah Code Ann. § 63G-11-103.

B. Indemnity Clause for Status Verification System

Law Firm (includes, but is not limited to, Law Firm, or any Consultant or other professional (including any other attorney(s)) retained by Law Firm to assist Law Firm in providing services covered under this Agreement) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section, whether violated by employees or agents of: (a) Law Firm; (b) any Subcontractor (as defined above); and/or (c) any entity or person for whom the Law Firm or Subcontractor may be liable.

DEADLINE FOR SUBMITTING PROPOSALS

Written proposals must be received by the Utah Attorney General, c/o Bryce H. Pettey, Assistant Attorney General, 160 East 300 South, Fifth Floor, P. O. Box 140874, Salt Lake City, UT 84114-0874, **no later than 5:00 p.m. on Monday, March 22, 2010.** A firm must submit six (6) copies of the firm's proposal(s). The Attorney General reserves the right to accept or reject any or all proposals received after the due date, to accept or reject any or all proposals or any or all parts of a proposal, to waive minor defects or technicalities, and to request new proposals.

THE SELECTION PROCESS

In General

The Attorney General will select bond counsel and disclosure counsel based upon each of the criteria set forth above under the respective headings of **“REQUIRED CONTENTS OF PROPOSALS FOR BOND COUNSEL and disclosure counsel.”** All criteria set forth under those headings are important, but the criteria in paragraph A under each heading will be given the greatest weight. Each of the subparagraphs of each paragraph A will be given equal weight, and the subparagraphs will be evaluated in the order they appear in each paragraph A.

A firm must first be determined to be qualified under paragraph A to perform the services described for bond counsel or disclosure counsel. After passing that threshold, the factors in paragraphs B and C will be considered. The lowest proposed fees will be an important factor in selecting bond counsel and disclosure counsel, but other factors will also be considered, and the firm submitting the lowest proposed fee will not necessarily be the firm that is selected.

The Attorney General may seek input from appropriate State officials, Board officials, officials from the University, and from prior issuers who have had experience with firms submitting proposals. Such input may be considered by the Attorney General in making the selection.

Oral Presentations

After reviewing the written proposals, the Attorney General may select bond counsel and disclosure counsel at that time; however, the Attorney General reserves the option of selecting several of the top applicants for bond counsel and disclosure counsel (selected on the basis of the written proposals) to make oral presentations to supplement the information in the written proposals. The Attorney General will decide whether oral presentations are needed or desirable, based upon factors brought to the Attorney General’s attention by the Attorney General’s staff and other State officials, the amount of time available to hear such presentations, and the Attorney General’s own schedule. The Attorney General may choose to have those oral presentations made to a panel of persons of the Attorney General’s own choosing; if so, the Attorney General may or may not be a member of that panel. Information in those oral presentations, and any recommendations from a panel or panel members, may be considered by the Attorney General, along with the information in the written proposals, in making the final selection of bond counsel and disclosure counsel.

If the Attorney General decides oral presentations are needed or desirable, the firms selected after initial review of the written proposals will be contacted by the Attorney General's office, and arrangements will be made to have the firms make their oral presentations. After

these presentations, the Attorney General will select bond counsel and disclosure counsel, after receiving the input from the panel.

NOTICE OF SELECTION

After the Attorney General has selected the firm, the selected firm will be notified. If a firm the Attorney General has selected is unable or unwilling to accept the appointment, the Attorney General will select another firm based upon the same criteria used to select the first firm. After a firm has been selected that is willing to, and does, accept the appointment under this RFP for bond counsel and disclosure counsel, a general announcement will be made to the public. It is anticipated bond counsel and disclosure counsel will be named no later than Thursday, April 8, 2010. Interested persons can learn the name of the firm appointed by calling (801) 366-0375 on Thursday, April 15, 2010.

NON-DISCLOSURE OF REASONS FOR SELECTING FIRM APPOINTED AND OF INFORMATION IN PROPOSALS; POSSIBLE REQUIREMENT TO DISCLOSE

Utah Admin. Code R. 105-1 (2008) provides that the reasons for selecting the firms that are appointed will not be made available to anyone. However, like all other State agencies, the Attorney General's office is subject to the Government Records Access and Management Act ("GRAMA") (Chapter 2, Title 63G, Utah Code Ann. (West Supp. 2008)). GRAMA makes most documents held by government entities in the State of Utah "public records," as defined in GRAMA. It is not yet clear just what effect GRAMA has upon proposals submitted in response to an RFP, such as this one. The Attorney General's office continues to analyze GRAMA for its effect on all written documents received by the Attorney General's office, including proposals received in response to an RFP, but all persons submitting proposals are on notice that the Attorney General may not be able to keep the information in the proposals confidential. **A firm desiring to protect the confidentiality of all or part of the contents of its proposal may wish to consider the applicability of Utah Code Ann. § 63G-2-309 (West 2009).**

FURTHER INFORMATION

Should you have questions relating to the business aspects of the bond issue, please contact: Dr. Gregory L. Stauffer, Associate Commissioner for Finance and Facilities (telephone 801-321-7131, or e-mail gstauffer@utahsbr.edu); or Arnold B. Combe, University of Utah Vice President for Administrative Services (telephone 801-581-6404, fax 801-581-4972, or e-mail arnie.combe@admin.utah.edu), or Kelly A. Murdock, Director, Wells Fargo Securities (telephone 801-246-1732, fax 801-246-1704, or e-mail kelly.a.murdock@wellsfargo.com). Firms should feel free – and indeed are encouraged – to contact Dr. Stauffer, Mr. Combe, or Mr. Murdock directly with any questions they may have regarding the business aspects of the bond

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issues described above. There is no need for a firm to contact the Attorney General's office before making inquiry of the Board or the University.

Should you have questions relating to this RFP, or relating to the Attorney General's process of selecting bond counsel, please contact Bryce H. Pettey of the Utah Attorney General's Office (telephone 801-366-0375, fax 801-366-0378, or e-mail bpettey@utah.gov).

REVENUE BOND AND CAPITAL FACILITIES

AUTHORIZATIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen D. Clark

Senate Sponsor: _____

LONG TITLE

General Description:

This bill authorizes certain state agencies and higher education institutions to issue revenue bonds, to build capital facilities using agency, institutional, or donated funds, or to sell, lease, or dispose of property.

Highlighted Provisions:

This bill:

- ▶ authorizes the issuance of revenue bonds by the State Building Ownership Authority and the State Board of Regents;
- ▶ authorizes other capital facility design and construction to be funded from agency, institutional, or donated funds; and
- ▶ authorizes the sale, lease, or disposal of certain state real property and certain interests in real property.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

63B-19-101, Utah Code Annotated 1953



28 **63B-19-102**, Utah Code Annotated 1953

29 **63B-19-201**, Utah Code Annotated 1953

30 **63B-19-301**, Utah Code Annotated 1953

31 **63B-19-401**, Utah Code Annotated 1953

32

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **63B-19-101** is enacted to read:

35 **Part 1. 2010 Revenue Bond Authorizations**

36 **63B-19-101. Revenue bond authorizations -- State Building Ownership Authority.**

37 The Legislature intends that:

38 (1) the State Building Ownership Authority, under the authority of Title 63B, Chapter
39 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
40 into or arrange for a lease-purchase agreement in which participation interests may be created,
41 to provide up to \$8,000,000 for the acquisition and construction of two stores for the
42 Department of Alcoholic Beverage Control, together with additional amounts necessary to pay
43 costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

44 (2) the stores to be addressed through this authorization are:

45 (a) a new 12,000 square foot liquor and wine store in southwest Salt Lake valley; and

46 (b) a new 12,000 square foot liquor and wine store on the east side of Salt Lake City;

47 (3) the Department of Alcoholic Beverage Control use increased sales revenues as the
48 primary revenue source for repayment of any obligation created under authority of this section;
49 and

50 (4) the Department of Alcoholic Beverage Control may request operation and
51 maintenance funding from sales revenues.

52 Section 2. Section **63B-19-102** is enacted to read:

53 **63B-19-102. Revenue bond authorizations -- Board of Regents.**

54 (1) The Legislature intends that:

55 (a) the Board of Regents, on behalf of Weber State University, may issue, sell, and
56 deliver revenue bonds or other evidences of indebtedness of Weber State University to borrow
57 money on the credit, revenues, and reserves of the university, other than appropriations of the
58 Legislature, to finance the cost of demolition, replacement, and construction of student housing

59 on the Ogden campus;

60 (b) Weber State University use student housing rental fees and parking fees as the
61 primary revenue sources for repayment of any obligation created under authority of this
62 section;

63 (c) the maximum amount of revenue bonds or evidences of indebtedness authorized by
64 this section is \$15,000,000, together with other amounts necessary to pay costs of issuance, pay
65 capitalized interest, and fund any debt service reserve requirements;

66 (d) the university may plan, design, and construct the Ogden campus housing project
67 subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of
68 Facilities Construction and Management; and

69 (e) the university may not request state funds for operation and maintenance costs or
70 capital improvements.

71 (2) The Legislature intends that:

72 (a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and
73 deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow
74 money on the credit, revenues, and reserves of the university, other than appropriations of the
75 Legislature, to finance the cost of purchasing the Ambassador Building from Salt Lake County;

76 (b) the University of Utah use clinical revenues and other institutional funds as the
77 primary revenue source for repayment of any obligation created under authority of this section;

78 (c) the maximum amount of revenue bonds or evidences of indebtedness authorized by
79 this section is \$12,000,000, together with other amounts necessary to pay costs of issuance, pay
80 capitalized interest, and fund any debt service reserve requirements; and

81 (d) the university may not request state funds for operation and maintenance costs or
82 capital improvements.

83 (3) The Legislature intends that:

84 (a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and
85 deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow
86 money on the credit, revenues, and reserves of the university, other than appropriations of the
87 Legislature, to finance the cost of purchasing the Orthopaedics Building from the Utah
88 Orthopaedic Foundation;

89 (b) the University of Utah use clinical revenues and other institutional funds as the

primary revenue sources for repayment of any obligation created under authority of this section;

(c) the maximum amount of revenue bonds or evidences of indebtedness authorized by this section is \$25,000,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements; and

(d) the university may not request state funds for operation and maintenance costs or capital improvements.

(4) The Legislature intends that:

(a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing an expansion of the University Guest House;

(b) the University of Utah use room rental, meeting room rental, and the sale of ancillary services as the primary revenue sources for repayment of any obligation created under authority of this section;

(c) the maximum amount of revenue bonds or evidences of indebtedness authorized by this section is \$10,000,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct the expansion of the University Guest House project subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management; and

(e) the university may not request state funds for operation and maintenance costs or capital improvements.

(5) The Legislature intends that:

(a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing an Ambulatory Care Complex;

(b) the University of Utah use clinical revenues and other institutional funds as the primary revenue sources for repayment of any obligation created under authority of this section;

121 (c) the maximum amount of revenue bonds or evidences of indebtedness authorized by
122 this section is \$119,541,000, together with other amounts necessary to pay costs of issuance,
123 pay capitalized interest, and fund any debt service reserve requirements;

124 (d) the university may plan, design, and construct the Ambulatory Care Complex
125 project subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of
126 Facilities Construction and Management; and

127 (e) the university may not request state funds for operation and maintenance costs or
128 capital improvements.

129 (6) The Legislature intends that:

130 (a) the Board of Regents, on behalf of Southern Utah University, may issue, sell, and
131 deliver revenue bonds or other evidences of indebtedness of Southern Utah University to
132 borrow money on the credit, revenues, and reserves of the university, other than appropriations
133 of the Legislature, to finance the cost of constructing the Southern Utah Museum of Arts in
134 conjunction with other funds authorized in Subsection 63B-19-201(1);

135 (b) Southern Utah University use student fees as the primary revenue sources for
136 repayment of any obligation created under authority of this section;

137 (c) the maximum amount of revenue bonds or evidences of indebtedness authorized by
138 this section is \$2,500,000, together with other amounts necessary to pay costs of issuance, pay
139 capitalized interest, and fund any debt service reserve requirements;

140 (d) the university may plan, design, and construct the Southern Utah Museum of Arts
141 project subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of
142 Facilities Construction and Management; and

143 (e) the university may not request state funds for operation and maintenance costs or
144 capital improvements.

145 Section 3. Section **63B-19-201** is enacted to read:

146 **Part 2. 2010 Capital Facility Design and Construction Authorizations**
147 **63B-19-201. Authorizations to design and construct capital facilities using**
148 **institutional or agency funds.**

149 (1) The Legislature intends that:

150 (a) Southern Utah University may, subject to the requirements of Title 63A, Chapter 5,
151 State Building Board - Division of Facilities Construction and Management, use \$10,000,000

in donations and the revenue bond authorized in Subsection 63B-19-101(6) to plan, design, and construct a Southern Utah Museum of Arts, with 28,000 new square feet;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operation and maintenance costs or capital improvements.

(2) The Legislature intends that:

(a) the University of Utah may, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, use \$17,878,000 in donations, federal funds, and institutional funds to plan, design, and construct an addition to the Henry Eyring Building, with 40,915 new square feet;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operation and maintenance costs or capital improvements.

(3) The Legislature intends that:

(a) Utah State University may, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, use \$3,000,000 in donations to plan, design, and construct a Botanical Center classroom building, with 7,900 new square feet;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operation and maintenance costs or capital improvements.

(4) The Legislature intends that:

(a) the Division of Services for the Blind and Visually Impaired in the Utah State Office of Rehabilitation may, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, use \$1,497,000 in federal grants to plan, design, and construct a residential facility for the blind, with 8,000 new square feet;

(b) no state funds be used for any portion of this project; and

(c) the division may not request state funds for operation and maintenance costs or capital improvements.

(5) The Legislature intends that:

(a) the Department of Public Safety may, subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management, use \$3,294,000 of nonlapsing balances within the driver license line item in the Department of Public Safety budget in fiscal year 2010 to plan, design, and construct an Ogden driver license building with 10,500 new square feet;

(b) no state funds be used for any portion of this project; and

(c) the department may not request state funds for operation and maintenance costs or capital improvements.

Section 4. Section **63B-19-301** is enacted to read:

Part 3. 2010 Property Authorizations

63B-19-301. Authorizations to sell property.

The Legislature intends that the Division of Facilities Construction and Management and any other state agency with title to property identified as Emery County Tax Parcel No.1-156-6 are authorized to sell a perpetual easement to Rocky Mountain Power that is approximately 60 feet in width on property at Green River that was subject to cleanup of radiation contamination by the United States Department of Energy and was acquired by the state of Utah, the purchase of which was funded 90% by the federal government pursuant to 42 U.S.C. Sec. 7914, subject to the following:

(1) The easement shall identify the conditions of the sale and require the payment of \$5,000 as consideration, of which 90% is to be refunded to the federal government.

(2) Rocky Mountain Power shall be required to comply with all applicable environmental laws and requirements in regard to the easement.

Section 5. Section **63B-19-401** is enacted to read:

Part 4. 2010 Lease-Purchase Authorizations

63B-19-401. Lease-purchase authorizations.

The Legislature intends that the courts may use existing funds to enter into a lease-purchase agreement for the Spanish Fork Courthouse at no additional cost to the state.